

Dissenting Views to H.R. 21,
the “Unlawful Internet Gambling Funding Prohibition Act”

Although we are opposed to illegal gambling, whether done over the Internet or otherwise, we cannot support the legislation reported by the Judiciary Committee because the enforcement mechanisms will likely be ineffective. We question the wisdom of spending valuable prosecutorial resources on attempting to shut down Internet gambling sites – an endeavor which ultimately is likely to be futile.

H.R. 21 makes it unlawful for a person engaged in a gambling business knowingly to accept, with respect to the transmission of bets or wagers, credit, electronic fund transfers, checks and other similar financial instruments.¹ By prohibiting the payment of credit, electronic funds, checks and other similar instruments to Internet gambling businesses, H.R. 21 deputizes the financial services industry to be the primary enforcers of the law.

In order to ensure compliance, the bill authorizes law enforcement to obtain injunctive or declaratory relief to restrain or prevent any person from paying or assisting in the payment of bets or wagers in interstate commerce.² Such relief, when granted against an interactive computer service, is limited to the removal of, or disabling of access to, an online site violating the law or a hypertext link to an online site violating the law, that resides on a computer server that such service controls or operates.³

The version of H.R. 21 that the Committee initially considered would have created an unfair situation in which Internet betting was legal for certain types of gambling (e.g. horse racing, lotteries, and dog racing⁴), but illegal for other types of Internet gambling (e.g. charitable gaming and Tribal gaming). At markup, however, the Committee adopted an amendment offered by Rep. Cannon that would make it illegal for any gambling business knowingly to accept financial instruments, thereby eliminating the bill’s preferences for certain types of gambling interests.

Credit card companies such as Visa and Master Card have raised concerns with the bill in the past because it could subject them to injunctions in numerous jurisdictions that require different – or even conflicting – remedies to prevent the payment of Internet bets or wagers. The result will be a hodge-podge of inconsistent court orders, rather than a cohesive enforcement scheme.

¹H.R. 21, subsection 3(a).

²H.R. 21, subsection (3)(c).

³H.R. 21, subsection (3)(c)(4).

⁴Such wagering was legal if it was a “lawful transaction with a business licensed or authorized by a State.”

In addition, the U.S. Chamber of Commerce has expressed concerns about the bill.⁵ They are concerned that the bill's prohibition on accepting financial instruments for "unlawful Internet gambling" is unduly vague and, as such, will subject the financial services industry to criminal liability without sufficient notice of the law. We agree that the law governing what constitutes "unlawful Internet gambling" is not well settled.

Also, relying on financial institutions to enforce the law will likely be ineffective. Credit card companies have a limited ability to block financial transactions to illegal Internet gambling businesses. The companies rely on a merchant coding system to ascertain the nature of particular transactions, but this system has limitations. First, it depends on the merchant to accurately code a transaction. There are obvious incentives for many Internet gambling merchants to falsify their merchant identification.⁶

More significantly, the Chamber also contends the coding system applies only when an online gambler uses a credit card to transact business directly with an online gambling merchant. Often times, an Internet gambler will use electronic cash and account funding systems to create a pool of electronically available funds. Thus, a cardholder could use his or her credit card to purchase "e-cash" on a web site that does not, itself, offer gambling, but allows that e-cash to be used on another web site that does offer gambling. The credit card coding system would not capture these transactions as Internet gambling.⁷ And if the e-cash website is offshore, it could be beyond the reach of U.S. law enforcement.

Additionally, the bill does not make it illegal for an individual to place an Internet bet. Rather, the bill only criminalizes an Internet gambling *business* which accepts bets or wagers or accepts credit or other types of financial instruments. As such, the bill leaves out the most effective enforcement mechanism – targeting individual bettors. This legislation, therefore, has little or no deterrent value. Offshore gambling sites will evade any restrictions easily, and individual bettors will continue to seek out these sites and gamble free from any fear of any legal consequences.

Conclusion

Although the intent of this legislation is laudable, we believe conscripting credit card companies to enforce our criminal laws is ineffective and will set a bad precedent regarding the Internet. In addition, criminalizing only the Internet gambling business without placing any

⁵Letter from R. Bruce Josten to Chairman Sensenbrenner dated May 13, 2003.

⁶Testimony of Mark MacCarthy, Senior Vice President of Public Policy, Visa U.S.A., Inc., before the Subcommittee on Oversight and Investigations of the Committee on Financial Services, 107th Congress, 2nd Sess. (July 12, 2001).

⁷*Id.*

penalty on the individual bettor further weakens the enforcement scheme of the bill. In the end, it is unlikely that this legislation will successfully halt Internet gambling.

John Conyers, Jr.
Melvin L. Watt
Sheila Jackson Lee
Tammy Baldwin
Anthony D. Weiner
Linda T. Sanchez